

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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| In re: CYNERGY DATA, LLC, <i>et al.</i> , ¹ Debtors. | Chapter 11 Case No. 09-13038 (KG) Jointly Administered Related Docket Nos. 13, 106 |
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CERTIFICATION OF COUNSEL REGARDING BID PROCEDURES ORDER

I, John H. Schanne, II, an associate with Pepper Hamilton LLP, co-counsel to the above-referenced debtors and debtors-in-possession (the “Debtors”), hereby certify:

1. On September 1, 2009, the Debtors filed the *Debtors’ Motion for an Order Pursuant to Sections 105, 363, 365, 503 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014 (I)(A) Authorizing and Scheduling an Auction at Which the Debtors Will Solicit Higher and Better Offers in Connection with the Sale of Certain Assets, (B) Approving the Bid Procedures for Such Assets, (C) Approving Break-Up Fee and Expense Reimbursement and (D) Approving the Form and Scope of Notice of the Bid Procedures and Auction; (II) Approving the Sale of the Assets Free and Clear of All Liens, Claims, and Encumbrances; (III) Approving Procedures for Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief as Requested Herein* (Docket No. 13) (the “Bid Procedures Motion”).

¹ The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

2. On September 15, 2009, the Court held a hearing to consider, *inter alia*, the Bid Procedures Motion. At the hearing, the court entered an order approving the Bid Procedures Motion (Docket No. 106) (the “Bid Procedures Order”).

3. The Debtors have become aware of certain inconsistencies in the Bid Procedures Order. Counsel has drafted a proposed form of Order correcting such inconsistencies.

4. Attached hereto as **Exhibit A** is a proposed form of Order counsel believes accurately reflects the Court’s rulings while reconciling the inconsistencies in the Bid Procedures Order.

5. Attached hereto as **Exhibit B** is a blackline illustrating the proposed changes.

6. The Debtors respectfully request that the Court enter the proposed Order attached hereto as **Exhibit A** at the Court’s earliest convenience.

Dated: September 16, 2009
Wilmington, Delaware

Respectfully submitted,
PEPPER HAMILTON LLP

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*Counsel for the Debtors
and Debtors in Possession*

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

CYNERGY DATA, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered

Related Docket No. 13

AMENDED ORDER (A) AUTHORIZING AND SCHEDULING AN AUCTION AND HEARING TO APPROVE THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTORS, (B) APPROVING THE BID PROCEDURES FOR SUCH ASSETS, (C) APPROVING BREAK UP FEE AND EXPENSE REIMBURSEMENT (D) APPROVING THE FORM AND SCOPE OF NOTICE OF THE BID PROCEDURES AND AUCTION, (E) ESTABLISHING PROCEDURES RELATING TO THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (F) GRANTING RELATED RELIEF

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”), pursuant to sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of an order approving the bidding procedures and the sale of the Transferred Assets; and the Court having determined that the relief provided herein is in the best interest of the Debtors, their estates, their creditors and other parties in interest; and due and adequate notice of the Motion having been given under the circumstances; and upon the record of the hearing on the Motion, and the full record of these cases; and after due deliberation thereon; and good and sufficient cause appearing therefor,

¹ The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

THE COURT HEREBY FINDS THAT:³

A. This Court has jurisdiction over the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief requested in the Motion are sections 105(a), 363, 365, 503 and 507 of the Bankruptcy Code, (ii) Rules 2002, 6004, 6006, 9007 and 9014 of the Bankruptcy Rules, and (iii) Rule 6004-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

C. Notice of the Motion, having been provided to the parties listed therein (the “Notice Parties”), is sufficient in light of the circumstances and nature of the relief requested in the Motion, and no other or further notice is required except as set forth herein with respect to the Bid Procedures, Auction and Sale Hearing. A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties-in-interest.

D. The Debtors’ proposed notice of the Bid Procedures is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the sale of the Transferred Assets, and the Bid Procedures to be employed in connection therewith.

E. The Debtors have articulated good and sufficient reasons for this Court to grant the relief requested in the Motion regarding the sale process, including without limitation, (i) approval of the Bid Procedures, the Expense Reimbursement, and the Break-Up Fee, (ii) the scheduling of the Bid Deadline, Auction and Sale Hearing for the sale of the Transferred Assets; (iii) the establishment of procedures to fix the Cure Amounts to be paid under section 365 of the

³ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Bankruptcy Code in connection with the assumption and assignment of the executory contracts and unexpired leases, and (iv) approval and authorization to serve the Sale Notice and Cure Notice.

F. The Bid Procedures and the APA were negotiated in good faith and at arms' length by the Debtors and the Purchaser.

G. The Expense Reimbursement, the Break-Up Fee and the provisions regarding termination in Article XI of the APA were material inducements to the Purchaser to submit the bid that will serve as a minimum or floor bid on which the Debtors, their creditors, suppliers, vendors, contract parties and other bidders may rely. The Purchaser has provided a material benefit to the Debtors, their estates and their creditors by increasing the likelihood that the best possible price for the Transferred Assets will be received by the Debtors. Accordingly, the Bid Procedures, the Expense Reimbursement, and the Break-Up Fee, are reasonable and appropriate and represent the best method for maximizing value for the benefit of the Debtors, their estates and creditors.

H. The Debtors have demonstrated that the Expense Reimbursement and the Break-Up Fee are actual and necessary costs and expenses of preserving the Debtors' estates, within the meaning of section 503(b) of the Bankruptcy Code, and of substantial benefit to the Debtors' estates by inducing the Purchaser's bid, which has established a bid minimum for other bidders for the Transferred Assets, thereby ensuring that during the Auction, if any, the Debtors receive the highest or best bid possible for the Transferred Assets.

I. The Sale Notice is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, Sale and Sale Hearing.

J. The Cure Notice is appropriate and reasonably calculated to provide all counterparties to the Assumed Contracts with proper notice of the potential assumption and assignment of the Assumed Contracts.

K. The entry of this Bid Procedures Order is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest.

IT IS HEREBY ORDERED, JUDGED AND DECREED THAT:

1. The Motion is GRANTED in all respects.
2. All objections, if any to the Motion or the relief provided herein that have not been withdrawn, waived, or settled, as announced to the Court at, or prior to, the hearing on the Motion or any adjournment thereof or set forth in a stipulation presented to the Court, and all reservations of rights included therein, are hereby overruled on the merits.
3. The Bid Procedures, in substantially the form annexed hereto as Schedule 1, are APPROVED and the terms thereof are incorporated herein as if fully set forth herein and shall apply with respect to the proposed sale of the Transferred Assets. The Debtors are authorized to take all actions necessary or appropriate to implement the Bidding Procedures.
4. As further described in the Bid Procedures, the deadline for submitting bids for the Transferred Assets is October 2, 2009 at 4:00 p.m. (prevailing Eastern Time) (the "Bid Deadline").
5. Pursuant to Bankruptcy Rule 6004(f)(1), the Debtors are authorized to conduct an Auction in respect of the Transferred Assets pursuant to the terms and conditions set forth herein. If Qualified Bids are received by the Debtors in accordance with the Bid Procedures, the Auction shall take place on October 5, 2009 at 10:00 a.m. (prevailing Eastern Time) at the offices of Nixon Peabody LLP, 437 Madison Avenue, New York, NY 10022, or such other location and time as designated by the Debtors in a notice to all Qualified Bidders and the Creditors

Committee. If, however, no Qualified Bid is received (other than the APA), the Auction will not be held and the Debtors shall immediately seek Bankruptcy Court approval of the sale to the Purchaser pursuant to the APA.

6. The Auction may be adjourned as the Debtors deem appropriate. Reasonable notice of such adjournment and the time and place for the resumption of the Auction shall be given to the Purchaser, all other Qualified Bidders, any Creditors Committee, the Secured Lenders and Harris

7. Each Qualified Bidder at the Auction will be required to confirm that it has not engaged in any collusion with respect to its bidding on the Transferred Assets.

8. The Auction will be conducted openly and all creditors of the Debtors are permitted to attend.

9. Bidding at the Auction will be transcribed or videotaped.

10. The Sale Hearing is scheduled to be held on October 7, 2009 at 2:00 p.m. (Eastern Time) before the Honorable Judge Kevin Gross United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801. The Debtors will seek the entry of an order of this Court at the Sale Hearing approving and authorizing the Sale to the Purchaser or such other party who is the Successful Bidder, on terms and conditions consistent with the APA or Modified APA, as may be amended and modified.

11. The form and scope of the Sale Notice attached hereto as Exhibit A is reasonable and appropriate and is hereby APPROVED and incorporated herein as if fully set forth herein.

12. The Debtors are hereby authorized and directed to serve copies of this Order and the Sale Notice, in substantially the form attached hereto as Exhibit A upon: (a) the U.S.

Trustee, (b) counsel to any Creditors Committee; (c) counsel to the Secured Lenders; (d) counsel to the postpetition lenders; (e) counsel to Harris; (f) parties entitled to receive notice in these Cases pursuant to Bankruptcy Rule 2002; (g) all entities known by the Debtors to have asserted any lien, claim, interest, or encumbrance in or on the Transferred Assets, (h) all counterparties to the Assumed Contracts, (i) the Internal Revenue Service and all state/local taxing authorities in jurisdictions where the Seller has or may have any tax liability; and (j) all persons who have expressed an interest in acquiring one or more of the Transferred Assets within the last six months, no later than one (1) day after entry of this Order, by first class mail, postage prepaid, or other method reasonably calculated to provide notice of the Sale and the Auction, and such service shall constitute good and sufficient notice of the sale of the Transferred Assets this Order, the Auction, the Sale Hearing and all proceedings to be held thereon.

13. The Break-Up Fee, the Expense Reimbursement and the termination provisions of Article XI of the APA are APPROVED.

14. The Debtors are hereby authorized and directed without the need for further order of this Court to pay the Expense Reimbursement and the Break-Up Fee whether or not the Purchaser elects to submit overbids.

15. The Break-Up Fee and the Expense Reimbursement constitute allowed administrative expense claims pursuant to sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code.

16. No person or entity, other than the Purchaser shall be entitled to any expense reimbursement or break-up fee, topping, termination or other similar fee or payment. Any bidder that seeks payment of such fees from Debtors in connection with any bid shall not be a Qualified Bidder and shall be excluded from the Auction and Sale Hearing.

17. The form and scope of the Cure Notice attached hereto as Exhibit B is reasonable and appropriate and is hereby APPROVED and incorporated herein as if fully set forth herein.

18. No later than ten 10 days prior to the Sale Hearing, the Debtors shall serve by first class mail or hand delivery a Cure Notice on each non-debtor counterparty to each Assumed Contract. Such Cure Notice is without prejudice to the Purchaser to exclude any executory contract or unexpired lease from assumption and assignment to the Purchaser, as set forth in the APA.

19. All objections, if any, to the proposed assumption and assignment of the Assumed Contracts to the Purchaser, including but not limited to, objections to the Cure Amounts must (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) to the extent it challenges a schedule Cure Amount, set forth the cure amount being claimed by the objecting party and provide appropriate documentation to support its objection; (d) be filed with the clerk of the Bankruptcy Court for the District of Delaware, Third Floor, 824 North Market Street, Wilmington Delaware 19801 by 12:00 p.m. (prevailing Eastern Time) on October 6, 2009 (the "Cure Objection Deadline"); and (e) be served upon (i) co-counsel to the Debtors, Nixon Peabody LLP, 437 Madison Avenue, New York, NY 10022, Attn: Dennis J. Drebsky, Esq.; (ii) co-counsel to the Debtor, Pepper Hamilton LLP, 1313 North Market Street, Wilmington, DE 19801, Attn: David B. Stratton, Esq.; (iii) counsel to the Official Committee of Unsecured Creditors, Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE 19899, Attn: Gregory A. Taylor, Esq., and Jager Smith P.C., One Financial Center, Boston, MA 02111, Attn: Bruce F. Smith; (iv) counsel for each of (A) Comerica, Bodman LLP, 6th Floor at Ford Field, 1901 St. Antoine Street, Detroit, MI 48336, Attn: Robert J. Diehl, Jr., Esq., (B) Wells, Paul, Hastings, Janofsky & Walker LLP, 515 South Flower Street, 25th Floor, Los

Angeles, CA 90071, Attn: Peter S. Burke, Esq., (C) the Dymas Group), Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, NY 10005, Attn: Gregory A. Bray, Esq., and (D) Garrison, Proskauer Rose LLP, 1585 Broadway, New York, NY 10036, Attn: Peter J. Antoszyk, Esq.; (v) counsel to Harris, Torys LLP, 237 Park Avenue, New York, NY 10017, Attn: Alison D. Bauer, Esq.; (vi) counsel to the Purchaser, Akerman Senterfitt LLP, 335 Madison Ave., Suite 2600, New York, NY 10017, Attn: Susan F. Balaschak, Esq.; and (vii) Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), 844 King Street, Room 2313, Wilmington, DE 19801 (Attn: Thomas P. Tinker), so as to be received no later than the Cure Objection Deadline.

20. Unless otherwise agreed to between the parties to the Assumed Contracts and the Purchaser (or if not the Purchaser, with the consent of the Successful Bidder), the Purchaser, in accordance with, and as limited by, the terms of the APA (or if not the Potential Purchaser, the Successful Bidder) shall cure those defaults at the closing that are required to be cured in accordance with section 365(b) of the Bankruptcy Code by payment of the undisputed portion of the Cure Amounts and/or reserving amount with respect to the disputed portion of the Cure Amounts. If no objection is timely received, the Cure Amounts set forth in the Cure Notice shall control without regard to anything contrary in the Assumed Contract or any other document as of the date of the Cure Notice.

21. Notwithstanding anything to the contrary herein, through the date of Closing, the Debtors, the Purchaser or the Successful Bidder, as the case may be, shall have the right to exclude from the Transferred Assets any one or more Permits or Contracts, and in such case any such excluded Contract or Permit shall constitute an Excluded Asset and shall not constitute, for any purpose whatsoever, a Transferred Asset. Neither the Debtors, the Purchaser nor the

Successful Bidder shall incur any liability, obligation, or debt in connection with or related to such Excluded Assets. In the event the Debtors, the Purchaser or the Successful Bidder exercises its right to excluded from the Transferred Assets one or more Permits or Contracts that had been designated as an Assumed Contract (the "Additional Excluded Contracts"), on or before the Closing, the Debtors will serve a notice on the non-debtor counterparties to such Additional Excluded Contracts.

22. In the event that the Purchaser is not the Successful Bidder for the Transferred Assets, on October 5, 2009, at the conclusion of the Auction, the Debtors propose to serve a notice via facsimile identifying the Successful Bidder upon each Counter-Party to an executory contract or unexpired lease to be assumed and assigned to the Successful Bidder. Each Counter-Party shall have until 12:00 p.m. on October 6, 2009 (the "Adequate Assurance Objection Deadline") to object to the assumption and assignment of such executory contract or unexpired lease solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.

23. In the event a party to a Assumed Contract files a timely objection asserting a higher cure amount than the Cure Amount, and the parties are unable to consensually resolve the dispute prior to the Sale Hearing, the amount to be paid under section 365 of the Bankruptcy Code with respect to such objection will be determined at the Sale Hearing or such other date and time as may be fixed by this Court. All other objections to the proposed assumption and assignment of the Assumed Contracts will be heard at the Sale Hearing.

24. Responses or objections, if any, to the relief requested in the Motion with regard to the request for the sale of the Transferred Assets, must be (a) in writing; (b) state with specificity the basis therefore; (c) comply with the Bankruptcy Rules and the Local Rules; (d) be

filed with the clerk of the Bankruptcy Court for the District of Delaware, Third Floor, 824 North Market Street, Wilmington Delaware 19801; and (e)

25. Debtors further request that any responses or objections to the relief to be considered at the Sale Hearing, including, but not limited to, the Debtors' request to approve the sale of the Transferred Assets, be (a) in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the clerk of the Bankruptcy Court for the District of Delaware, Third Floor, 824 North Market Street, Wilmington Delaware 19801 by 12:00 p.m. (prevailing Eastern Time) on October 6, 2009 (the "Objection Deadline"); and (d) be served upon (i) co-counsel to the Debtors, Nixon Peabody LLP, 437 Madison Avenue, New York, NY 10022, Attn: Dennis J. Drebsky, Esq.; (ii) co-counsel to the Debtor, Pepper Hamilton LLP, 1313 North Market Street, Wilmington, DE 19801, Attn: David B. Stratton, Esq.; (iii) co-counsel to the Official Committee of Unsecured Creditors appointed in these cases (the "Creditors Committee"): (a) Jager Smith P.C., One Financial Center, Boston, Massachusetts, 02111, Attn: Bruce F. Smith and (b) Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE 19899, Attn: Gregory A. Taylor; (iv) counsel for each of (A) Comerica, Bodman LLP, 6th Floor at Ford Field, 1901 St. Antoine Street, Detroit, MI 48336, Attn: Robert J. Diehl, Jr., Esq., (B) Wells, Paul, Hastings, Janofsky & Walker LLP, 515 South Flower Street, 25th Floor, Los Angeles, CA 90071, Attn: Peter S. Burke, Esq., (C) the Dymas Group), Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, NY 10005, Attn: Gregory A. Bray, Esq., and (D) Garrison, Proskauer Rose LLP, 1585 Broadway, New York, NY 10036, Attn: Peter J. Antoszyk, Esq.; (v) counsel to Harris, Torys LLP, 237 Park Avenue, New York, NY 10017, Attn: Alison D. Bauer, Esq.; (vi) counsel to the Purchaser, Akerman Senterfitt LLP, 335 Madison Ave., Suite 2600, New York, NY 10017, Attn: Susan F. Balaschak, Esq.; and

(vii) Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), 844 King Street, Room 2313, Wilmington, DE 19801 (Attn: Thomas P. Tinker), so as to be received no later than the Objection Deadline.

26. Notwithstanding Bankruptcy Rule 6004(h), 6006(d), 7062 or 9014, if applicable or any other local rule or otherwise, the terms of this Order shall be effective and enforceable immediately upon its entry.

27. Any conflict between the terms and provisions of this Order and the APA, shall be resolved in favor of this Order.

28. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order.

Dated: Wilmington, Delaware
September ____ 2009

UNITED STATES BANKRUPTCY JUDGE

SCHEDULE 1 to Bid Procedures Order

Bid Procedures

BID PROCEDURES¹

Cynergy Data, LLC and certain of its affiliated debtors and debtors in possession (collectively, “Seller”) have entered into an Asset Purchase Agreement (the “APA”) dated August 24, 2009 with Cynergy Holdings, LLC (the “Purchaser”), pursuant to which the Seller contemplates the sale (the “Sale”) of substantially all assets related to Seller’s business (the “Transferred Assets”) and the assumption by the Purchaser of certain liabilities of the Seller (the “Assumed Liabilities”), free and clear of all liens, claims, encumbrances and interest, except as otherwise provided for in the APA, pursuant to sections 363 and 365 of the Bankruptcy Code. The proposed transaction is subject to the approval of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). As contemplated by the APA and as set forth in that certain order dated September 16, 2009 (I)(A) authorizing and scheduling an auction (the “Auction”) at which the Debtors will solicit higher and better offers in connection with the sale of the Transferred Assets and Assumed Liabilities, (B) approving the bidding procedures (the “Bid Procedures”) for such assets, (C) approving the Break-Up Fee and expense reimbursement and (D) approving the form and scope of notice of the Bid Procedures Auction and Sale; and (II) approving procedures for assumption and assignment of certain executory contracts and unexpired leases; and (III) granting related relief as requested therein (the “Amended Bid Procedures Order”), the following Bid Procedures shall be the exclusive mechanism governing the Sale.

“As Is, Where Is”

The sale of the Transferred Assets will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Debtors, their agents, or estates, except, to the extent set forth in the APA or Modified APA (as defined below), as applicable, and the schedules thereto, with respect to the Successful Bidder (as defined below), approved by the Bankruptcy Court.

Free Of Any And All Claims And Interests

All of the Debtors’ right, title, and interest in and to the Transferred Assets, or any portion thereof, to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims charges, options, and interests including, but not limited to any recoupment, offset, defenses, debts and obligations thereon and there against (collectively, the “Claims and Interests”), such Claims and Interests to attach to the net proceeds of the sale of such Transferred Assets, except, the extent otherwise set forth in the APA or Modified APA, as applicable. Notwithstanding the foregoing, the Debtors own 15.75% of the membership interests (the “MCC Membership Interest”) in Merchant Cash and Capital, LLC, a Delaware limited liability company (“MCC”), pursuant to that certain MCC Amended and Restated Limited Liability Agreement dated October 2, 2006 (“MCC Agreement”). Pursuant to Section 8.2.2 of the MCC Agreement, any sale by a member to a third party is subject to a 20 day notice period and a right by another member to purchase the membership interest on the same terms and conditions offered by the third party. In accordance with Section 2.1(k) of the APA, the MCC

¹ Terms capitalized but not defined herein shall have the meaning ascribed to them in the Motion.

has allocated \$_____ of the Purchase Price to the MCC Membership Interest. The sale of the MCC Membership Interest is not free and clear of the MCC Agreement provisions and the Debtors intend to proceed with the sale of such interest subject to the terms of the MCC Agreement. Should another member of MCC exercise its rights in accordance with the MCC Agreement, then the MCC Membership Interest will be transferred in accordance with the MCC Agreement without any impact upon the Purchase Price under the APA.

I. Access to Non-Public Information

To obtain access to all material non-public information that has been or will be delivered to the Purchaser and any other bidder concerning the Transferred Assets and Assumed Liabilities, each interested person or entity (other than the Purchaser) must deliver (unless previously delivered) to the advisors to the Seller, Stifel, Nicolaus & Company, Incorporated (“Stifel, Nicolaus”), 237 Park Ave., 8th Floor, New York, NY, 10017, Attn: Brett J. Pogany, and counsel to the Seller, Nixon Peabody LLP, 437 Madison Avenue, New York, NY 10022, Attn: Dennis J. Drebsky, Esq. the following materials (the “Potential Bid Package”):

(a) Confidentiality Agreement.

An executed confidentiality agreement, in form and substance satisfactory to the Debtors, which may be obtained from Stifel, Nicolaus and delivery of such confidentiality agreement to Stifel, Nicolaus to be required before any access to information is provided.

(b) Evidence of Financial Capability.

Evidence of the prospective buyer’s source of capital or other financial ability to complete the contemplated transactions, the adequacy of which the Debtors and their advisors will determine in their sole discretion.

The Debtors, after consultation with their counsel and financial advisors will determine in their reasonable business judgment whether the entity requesting access to information will be reasonably likely to be able to complete and consummate its proposed transaction on terms no less favorable in the aggregate than the terms of the APA and within the time frame contemplated in the APA if it were the Successful Bidder.

As soon as practicable the Debtors will notify the interested entity if it is a Potential Bidder. Once so notified the Debtors will afford such Potential Bidder access to due diligence material, as the Debtors deem appropriate in the exercise of their reasonable business judgment.

Each Qualified Bidder (as defined below) will be deemed to have acknowledged and will so represent in any asset purchase agreement that it had the opportunity to conduct any and all due diligence necessary prior to making any offer and that it has relied solely on its own independent review and that it did not rely on any written or oral statements, representations, promises or guaranties of the Debtors and regarding the Debtors’ business or the completeness of any information provided by the Debtors in connection with its bid or bidding process.

II. Determining Qualified Bids and Qualified Bidders

(a) Qualified Bid Requirements.

Each offer, solicitation or proposal (a "Bid") from any interested person or entity (each, a "Potential Bidder") must be in writing and satisfy each of the following conditions to be deemed a "Qualified Bid" and for the bidder (other than the Purchaser) to be deemed a "Qualified Bidder:"

1. Identification of Bidder.

The Bid shall identify the Potential Bidder and the applicable Potential Bidder's Sponsor (as defined below) (if any) and their representatives who are authorized to act on their behalf regarding the contemplated transaction. If the Potential Bidder is a newly formed acquisition vehicle, the Bid must include evidence (in the form of binding commitment letters, current financial statements, guarantees or otherwise) that the Potential Bidder and/or the Potential Bidder's Sponsor as defined below, is able to fulfill all other obligations in connection with the contemplated transactions including, but not limited to, paying liquidated damages, if any.

2. Executory Contracts and Unexpired Leases.

The Bid shall identify with particularity each and every executory contract and unexpired lease that is to be assumed and assigned pursuant to the Modified APA including, without limitation, whether it will require assumption and assignment of the Merchant Service Agreements and BIN Agreement (as defined in the Moore Declaration) and demonstrate to the reasonable satisfaction of the Debtors, in consultation with the Creditors Committee, the Secured Lenders and Harris, and in consideration of their respective views, that such bidder has the financial ability and can otherwise comply with all future obligations under all such executory contracts and unexpired leases, including requirements under the BIN Agreement if it is to be assigned.

3. Nature of Bids for Assets.

A Bid must be a good faith offer to purchase all or substantially all of the Transferred Assets, as defined in the APA, and provide for the payment and assumption of all or substantially all of the Assumed Liabilities, as defined in the APA, on terms that are no less favorable to the Seller than those set forth in the APA, after taking into account the payment in full of the Purchaser's Expense Reimbursement and Break-Up Fee. A Bid shall include a clean and duly executed APA (the "Modified APA") and a marked Modified APA reflecting the variations from the APA executed by the Purchaser. Bids shall not be conditioned on or subject to obtaining financing, shareholder approval or the outcome of due diligence, including environmental due diligence, by the Potential Bidder. Each Potential Bidder must agree that if its is selected as the Successful Bidder or the Back-Up Bidder (each as defined below), the Bid will remain binding and irrevocable until the closing of the Sale.

4. Financial Capability

Except with respect to a Bid by a Secured Lender, the Bid shall state that such bidder is financially capable of consummating the transactions contemplated by the Modified APA and demonstrate to the reasonable satisfaction of the Debtors, in consultation with the Creditors Committee, the Secured Lenders and Harris, and in consideration of their respective views, that such bidder has the financial ability to fund and consummate the acquisition of the Transferred Assets and Assumed Liabilities by the Closing, and, except with respect to a Bid by a Secured Lender, the Bid shall include such financial and other information that will allow the Debtors, in consultation with the Creditors Committee, the Secured Lenders and Harris, and in consideration of their respective views, to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate the transactions contemplated by the Modified APA.

5. Corporate Authority.

A Bid shall contain written evidence of the approval of the contemplated transaction by the Potential Bidder's Board of Directors (or comparable governing body); *provided, however,* that, if the Potential Bidder is an entity specially formed for the purpose of acquiring the Transferred Assets, then the Potential Bidder must furnish evidence or other information acceptable to the Seller of the approval of the contemplated transactions by the Board of Directors (or comparable governing body) of controlling equity holder(s) of the Potential Bidder (the "Potential Bidder's Sponsor").

6. Minimum Bid.

The consideration proposed by the Bid must be in cash, and must equal or exceed the sum of:

- a. The Purchase Price (as defined in the APA); plus,
- b. The "Minimum Initial Overbid Amount," which shall be \$4,468,000. The Minimum Initial Overbid Amount represents:
 - (i) a break-up fee payable to the Purchaser in the amount of \$1,620,000 (the "Break-Up Fee"),
 - (ii) a reimbursement of actual, reasonable and necessary expenses of the Purchaser in the amount of \$648,000 (the "Expense Reimbursement") and
 - (iii) an initial overbid in the amount of \$2,200,000.

provided, that a Bid by any Secured Lender need not be in cash for any amount in excess of the aggregate amount outstanding under the postpetition financing facilities and the prepetition secured financing facilities if such bid otherwise complies with each of the requirements of this Section.

7. No Break-Up Fee, Etc. for Potential Bidders

A Bid may not request any break-up fee, termination fee, expense reimbursement or similar type of payment, nor shall any Qualified Bidder (other than the Purchaser) be entitled to any break-up fee, termination fee, expense reimbursement or similar type of payment. Any such Bid will automatically not qualify as a Qualified Bid. Moreover, neither the tendering of a Bid nor the determination that a Bid is either a Qualified Bid or the Successful Bid (as defined below) shall in any way entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment.

8. Good Faith Deposit

Except for a Bid submitted by any Secured Lender that constitutes a Qualified Credit Bid, each Bid from a Potential Bidder must be accompanied by a deposit in the amount of 10% of the value of its Bid (each such deposit, a "Good Faith Deposit"). Each Good Faith Deposit shall be in the form of a bank check or wire transfer pursuant to instructions issued by the Seller, and shall be treated according to the terms specified herein.

9. Representation Regarding Excluded Assets

Each Bid shall expressly provide that the Transferred Assets shall not include any (a) any rights or Claims against any current or former equity holder (other than Andres Ordonez) and any Persons in which they hold a material or controlling equity interest, including SignaPay, Ltd (b) any Claims of Seller that are not Transferred Claims, (c) any rights or Claims of Seller with respect to the residual amount of the Rolling Reserve as and when it becomes available for distribution., and (d) any rights or Claims of Seller against those Persons that are subject of Transferred Claims, to the extent arising out of either (i) counterclaims, setoffs, recoupment or other similar defensive rights (but in no event seeking affirmative recoveries), (ii) objections by such Persons to Seller's assertion of appropriate Cure Costs or (iii) or relating to the Excluded Assets as provided for in the APA at Section 2.2(e).

10. Bid Deadline

Any person or entity interested in participating in the Auction must submit a Qualified Bid (as defined below) on or before **October 2, 2009, at 4:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline") in writing, to (1) co-counsel to the Debtors, Nixon Peabody LLP, 437 Madison Avenue, New York, NY 10022, Attn: Dennis J. Drebsky, Esq.; (2) co-counsel to the Debtors, Pepper Hamilton LLP, 1313 North Market Street, Wilmington, DE 19801, Attn: David B. Stratton, Esq.; (3) co-counsel to the Official Committee of Unsecured Creditors appointed in these cases (the "Creditors Committee"): (a) Jager Smith P.C., One Financial Center, Boston, Massachusetts, 02111, Attn: Bruce F. Smith and (b) Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE 19899, Attn: Gregory A. Taylor; (4) counsel for each of (a) Comerica Bank, ("Comerica"), Bodman LLP, 6th Floor at Ford Field, 1901 St. Antoine Street, Detroit, MI 48336, Attn: Robert J. Diehl, Esq., (b) Wells Fargo Foothill LLC ("Wells"), Paul, Hastings, Janofsky & Walker LLP, 515 South Flower Street, 25th Floor, Los Angeles, CA 90071, Attn: Peter S. Burke, Esq., (c) Dymas Funding Company ILC, Ableco Finance LLC and A3 Funding LP (collectively, the "Dymas Group"), Milbank, Tweed, Hadley

& McCloy LLP, 1 Chase Manhattan Plaza, New York, NY 10005, Attn: Gregory A. Bray, Esq., and (d) Garrison Credit Investments ("Garrison"), Proskauer Rose LLP, 1585 Broadway, New York, NY 10036, Attn: Peter J. Antoszyk, Esq. (Comerica, Wells, the Dymas Group and Garrison, together with any of their respective successors or assigns, the "Secured Lenders"); (5) counsel to Harris, N.A. and Moneris Solutions, Inc. (together, with Harris, N.A., "Harris"), Torys LLP, 237 Park Avenue, New York, NY 10017, Attn: Alison D. Bauer, Esq.; (6) counsel to the Purchaser, Akerman Senterfitt LLP, 335 Madison Ave., Suite 2600, New York, NY 10017, Attn: Susan F. Balaschak, Esq.; and (7) Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), 844 King Street, Room 2313, Wilmington, DE 19801 (Attn: Thomas P. Tinker).

(b) Qualified Bidders.

The Debtors, in consultation with any Creditors Committee, the Secured Lenders and Harris, and in consideration of their respective views, shall make a determination regarding whether a Bid is a Qualified Bid and shall notify Potential Bidders whether their Bids have been determined to be Qualified Bids by no later than **October 4, 2009, at 12:00 p.m. (prevailing Eastern time)**. The Purchaser is deemed a Qualified Bidder and the APA constitutes a Qualified Bid for all purposes. The Seller reserves the right to reject any Bid (even if such Bid constitutes a Qualified Bid) if the Seller determines, in its sole discretion, that such Bid is inadequate or insufficient or the Seller determines, in its sole discretion, that such Bid is not in conformity with the requirements of the Bankruptcy Code or any related rules, the terms set forth in the Bid Procedures or contrary to the best interests of the Seller and their estates. Any party may seek the Court's review of the Seller's determination that a Potential Bidder is not a Qualified Bidder; *provided, however*, that any such challenge must be raised and concluded prior to the commencement of the Auction. The Seller's determination of the Qualified Bidders shall become irrevocable and unreviewable once the Auction has commenced.

FOR THE AVOIDANCE OF DOUBT, POTENTIAL BIDDERS SHOULD BE AWARE THAT, ABSENT CONSENT FROM THE DEBTOR, IN CONSULTATION WITH ANY CREDITORS' COMMITTEE, THE SECURED LENDERS AND HARRIS, AND IN CONSIDERATION OF THEIR RESPECTIVE VIEWS, ANY QUALIFIED BIDDER THAT DOES NOT SUBMIT A QUALIFIED BID BY THE BID DEADLINE WILL NOT BE ALLOWED TO (1) PARTICIPATE IN THE AUCTION UNDER ANY CIRCUMSTANCES OR (2) SUBMIT ANY OFFER AFTER THE BID DEADLINE EITHER BEFORE, DURING OR AFTER THE AUCTION.

Notwithstanding anything in these Bid Procedures to the contrary, (i) the Purchaser is deemed a Qualified Bidder, and the Purchaser's Bid shall be deemed a Qualified Bid, for all applicable purposes under these Bid Procedures with respect to the Sale, any Auction (as defined below) or otherwise, and (ii) the Secured Lenders are deemed "Qualified Bidders" for all applicable purposes and shall have the right to submit a credit bid at any time before or at the Auction, and any such bid will not fail to constitute a Qualified Bid solely because it contains a credit bid component so long as each of the requirements set forth in Section II(a) above are satisfied.

(c) No Qualified Bids.

If no conforming Qualified Bids are received, the Debtors shall not hold an Auction and, instead, the Purchaser shall automatically be deemed the Successful Bidder and the Seller shall request at the Sale Hearing that the Court approve the APA with the Purchaser.

(d) Negotiation and Modification of Qualified Bids.

Between the Bid Deadline and the Auction, the Debtors may discuss, negotiate or seek clarification of any Qualified Bid from a Qualified Bidder. Without the written consent of the Debtors, a Qualified Bidder may not modify, amend or withdraw its Qualified Bid, except for proposed amendments to increase the purchase price or otherwise improve the terms of the Qualified Bid for the Seller, during the period that such Qualified Bid remains binding as specified herein.

(e) Notice of the Auction

If the Debtors receive more than one Qualified Bid, the Auction will be held on **October 5, 2009, at 10:00 a.m. (prevailing Eastern Time)** at the offices of Nixon Peabody LLP, 437 Madison Avenue, New York, NY 10022, or at any such other location or time as designated by the Debtors in a notice to all Qualified Bidders and the Creditors Committee. On or before **October 4, 2009, at 12:00 p.m. (prevailing Eastern time)**, the Debtors shall provide each Qualified Bidder (including the Purchaser):

1. written notice of the Auction; and
2. a copy of the Qualified Bid that the Debtors believe constitutes the highest and best offer and with which it intends to commence the Auction (the "Pre-Auction Successful Bid").

III. The Auction

(a) Attendance at and Participation in the Auction.

The Auction shall be conducted openly and all creditors of the Debtors' estates shall be permitted to attend. Without limiting the foregoing, the Debtors, the Purchaser, Qualified Bidders, the Creditors Committee, the Secured Lenders, Harris, the U.S. Trustee, and their respective representatives (collectively, the "Observers") shall be entitled to attend the Auction. The Purchaser and the Qualified Bidders must appear in person at the Auction, or through a duly authorized representative. The only parties eligible to participate in the Auction shall be Qualified Bidders who have submitted a Qualified Bid to the Debtors prior to the Bid Deadline that was not rejected by the Debtors prior to the Auction.

(b) The Auction Process.

1. The Debtors Shall Conduct the Auction.

The Debtors and their representatives shall direct and preside over the Auction. Only the Purchaser and Qualified Bidders shall be entitled to make any subsequent bids at the Auction. The bidding at the Auction shall start at the purchase price stated in the Pre-Auction Successful Bid and continue, in one or more rounds of bidding, so long as during each round at least one Overbid (as defined below) is submitted. Each round shall last thirty minutes. All Overbids shall be made and received on an open basis, such that all material terms of each Overbid will be fully disclosed to all other Qualified Bidders. The bidding at the Auction will be transcribed or videotaped and the Debtors shall maintain a transcript of all bids made and announced at the Auction, including all Overbids and the Successful Bid.

2. No Collusion.

Each Qualified Bidder shall be required to acknowledge and agree in writing that it has not engaged (and agrees not to engage) in any collusion with respect to any Bids, the Auction or the Sale.

3. Terms of Overbids.

An “Overbid” is any bid made at the Auction after the Debtors’ announcement of the Pre-Auction Successful Bid, that is an increment of at least \$250,000 greater than the immediately preceding bid, and that otherwise complies with the terms and conditions for a Qualified Bid as set forth herein.

The Auction may include individual negotiations with the Qualified Bidders and/or open bidding in the presence of all other Qualified Bidders.

In the event an Auction is conducted, the Purchaser shall be permitted, but is not required to, submit an Overbid.

4. Announcing Overbids.

The Debtors shall announce the material terms of each Overbid at the Auction, and shall disclose its valuation of the total consideration offered in each such Overbid (and the basis for its determination) in order to confirm that each Overbid meets the requisite bid increment and to provide a floor for further Overbids.

5. Additional Terms and Conditions

The Debtors may adopt additional rules for the Auction at or prior to the Auction that, in their sole discretion, will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bid Procedures Order or the APA. The Auction may be adjourned as the Debtors deem appropriate. Reasonable notice of such adjournment and the time and place for the resumption of the Auction shall be given to all Qualified Bidders, any Creditors Committee, the Secured Lenders and Harris.

6. Credit for Break Up Fee and Expense Reimbursement

The Purchaser shall receive a credit equal to the full amount of the Break-Up Fee and Expense Reimbursement (as defined below) when bidding at the Auction.

IV. Identification of the Successful Bidder and Acceptance of Successful Bid

(a) Identification of the Successful Bidder and Alternate Bidder.

The Auction shall continue until there is only one offer that the Debtors determine in consultation with the Creditors' Committee, the Secured Lenders and Harris and in consideration of their respective views, and subject to Court approval, is the highest or best offer from among the Qualified Bidders (including the Purchaser) submitted at the Auction (the "Successful Bid"). In making this decision, the Debtors, in consultation with the Creditors Committee, the Secured Lenders and Harris, may consider, without limitation, the amount of the purchase price, the form of consideration being offered, the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof, the number, type and nature of any changes to the APA requested by each Qualified Bidder, the net benefit to the Debtors' estates, and the views of the Creditors Committee, Secured Lenders and Harris. The Qualified Bidder submitting such Successful Bid shall become the "Successful Bidder," and shall have such rights and responsibilities of a purchaser, as set forth in the applicable Modified APA.

Within three (3) days after adjournment of the Auction, but prior to the Sale Hearing, the Successful Bidder shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made and make and pay for all necessary filings with all applicable governmental or other authorities. **Any and all Bids made after the close of the Auction shall not be considered by the Debtors, the Secured Lenders or Harris.**

In announcing the Successful Bid and the Back-Up Bid, the Debtors shall announce the material terms of each Bid and the basis for determining the total consideration offered. If no Auction is held, then the Bid of the Purchaser as represented by the APA shall be deemed to be the Successful Bid.

(b) Acceptance of Bid from Successful Bidder.

The Seller presently intends to sell the Transferred Assets and the Assumed Liabilities to the Successful Bidder, pursuant to the APA or Modified APA, as applicable. The Seller shall be bound by the Successful Bid only when such Bid has been approved by the Court at the Sale Hearing (as defined below).

Except as otherwise provided in the APA or Modified APA, as applicable, and to the fullest extent permitted by the jurisdiction of the Bankruptcy Court, all of the Seller's right, title and interest in and to the Transferred Assets shall be sold free and clear of all Claims and Liens thereon and there against other than Permitted Encumbrances and Assumed Liabilities.

If the Seller sells any or all of the Transferred Assets to a Successful Bidder other than the Purchaser, the Seller will pay the Break-Up Fee and the Expense Reimbursement in accordance with the APA.

V. Back-Up Bidder

If an Auction is conducted, the Qualified Bidder with the next highest or otherwise best Qualified Bid, as determined by the Debtors in the exercise of their business judgment in consultation with the Creditors Committee, the Secured Lenders and Harris and in consideration of their respective views, at the Auction shall be required to serve as a Back-Up Bidder (the "Back-Up Bidder") and keep such bid open and irrevocable until 24 hours after the closing of the Sale with the Successful Bidder. Following the Sale Hearing, if the Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the Sale with the Back-Up Bidder without further order of the Court.

VI. Treatment of Good Faith Deposit

Except as otherwise provided herein, Good Faith Deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder or the Back-Up Bidder by no later than the fifth (5th) Business Day following the conclusion of the Auction. The Good Faith Deposit of the Back-Up Bidder shall be held by the Debtors until one (1) Business Day after the closing of the sale transaction with the Successful Bidder. The Good Faith Deposit of the Successful Bidder, if any, shall be held until the Closing of the Sale and applied in accordance with the APA or Modified APA, as applicable. If the Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Successful Bidder's Good Faith Deposit shall be forfeited to the Seller and the Seller shall have the right to seek any and all remedies and damages from the defaulting Successful Bidder.

VII. The Sale Hearing

The Successful Bid (or the APA, if no Qualified Bid other than that of the Purchaser is received or accepted) will be subject to approval by the Court. The Sale Hearing will take place on **October 7, 2009, at 2:00 p.m. (prevailing Eastern Time)** before the Honorable Kevin Gross, United States Bankruptcy Court, for the District of Delaware, 824 Market Street, 6th Floor, Courtroom #1, Wilmington, Delaware 19801. The Sale Hearing may be adjourned with the consent of the Successful Bidder from time to time without further notice to creditors or parties-in-interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

Exhibit A to the Bid Procedures Order

Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

CYNERGY DATA, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered

**NOTICE OF SALE OF SUBSTANTIALLY ALL
OF THE DEBTORS' ASSETS, AUCTION AND SALE HEARING**

1. On September 1, 2009, and continuing thereafter, Cynergy Data, LLC ("Cynergy Data"), Cynergy Data Holdings, Inc. ("CDH") and Cynergy Prosperity Plus, LLC ("Prosperity Plus" and, together with Cynergy Data and CDH, the "Debtors" or "Seller"), as debtors and debtors-in-possession, commenced voluntary cases pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). In connection therewith, the Seller and (the "Purchaser"), have entered into that certain agreement dated August 24, 2009 (the "APA"). Pursuant to the APA the Debtors seek to sell substantially all of their assets (the "Transferred Assets"), free and clear of all liens, claims, encumbrances and interest, including but not limited to recoupment, offsets, defenses, debts and obligations, except certain Permitted Encumbrances, as defined in the APA to the Purchaser and assume and assign certain executory contracts and unexpired leases to the Purchaser. Pursuant to the APA, the Purchaser will assume the Assumed Liabilities as defined in the APA. All terms not otherwise defined herein shall have the meaning ascribed to them in the Bid Procedures Order, a copy of which is being served upon you along with this Sale Notice.

2. On September 16, 2009, the United States Bankruptcy Court for the District of Delaware entered the order (a) authorizing and scheduling an auction at which the Debtors will solicit competing bids for a sale of the Transferred Assets and Assumed Liabilities, free and clear of all liens, claims, encumbrances and interest, including but not limited to recoupment, offsets, defenses, debts and obligations; (b) approving the bid procedures; (c) approving a Break Up Fee and Expense Reimbursement; (c) scheduling the date and time for the hearing to approve the sale to the winning bidder at the Auction; and (d) approving the form and scope of notice of the Sale Hearing and the Auction (the "Amended Bid Procedures Order"), which, among other things, establishes bid procedures (the "Bid Procedures"), which govern the manner in which all or substantially all of the Debtors assets (the "Transferred Assets") are to be sold. Pursuant to the Bid Procedures Order, if the Debtors receive any Qualified Bids (as defined in the Bid Procedures), for the Transferred Assets, an auction (the "Auction") therefore shall take place on **October 5, 2009 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Nixon Peabody

¹ The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

Avenue, New York, NY 10022. Only parties that have submitted a Qualified Bid, as set forth in the Bid Procedures Order, by no later than **October 2, 2009 at 4:00 pm** (prevailing Eastern Time) (the "Bid Deadline") may participate at the auction. Any party that wishes to take part in this process and submit a bid for the Transferred Assets and Assumed Liabilities must submit their competing bid prior to the Bid Deadline and in accordance with the Bid Procedures.

3. The Sale Hearing to consider approval of the Sale to the Purchaser or such other Successful Bidder, free and clear of all liens, claims, and encumbrances, will be held before the Honorable Kevin Gross, United States Bankruptcy Judge, 824 North Market Street, Wilmington, Delaware 19801 on **October 7, 2009 at 2:00 pm (prevailing Eastern Time)**, or at such other time thereafter as counsel may be heard. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

4. Objections, if any, to the relief requested at the Sale Hearing, must be: (a) be in writing; (b) comply with the Bankruptcy Rules and Local Rules; (c) be filed with the Clerk of the Bankruptcy Court for the District of Delaware, Third Floor, 824 North Market Street, Wilmington, Delaware 19801, on or before **12:00 p.m. (prevailing Eastern Time) on October 6, 2009** (the "Objection Deadline"); and (d) be served upon: (1) co-counsel to the Debtors, Nixon Peabody LLP, 437 Madison Avenue, New York, NY 10022, Attn: Dennis J. Drebsky, Esq.; (2) co-counsel to the Debtor, Pepper Hamilton LLP, 1313 North Market Street, Wilmington, DE 19801, Attn: David B. Stratton, Esq.; (3) co-counsel to the Official Committee of Unsecured Creditors appointed in these cases (the "Creditors Committee"): (a) Jager Smith P.C., One Financial Center, Boston, Massachusetts, 02111, Attn: Bruce F. Smith and (b) Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE 19899, Attn: Gregory A. Taylor; (4) counsel for (each of) (a) ("Comerica"), Bodman LLP, 6th Floor at Ford Field, 1901 St. Antoine Street, Detroit, Michigan 48226, Attn: Robert J. Diehl, Jr., (b) Wells Fargo Foothill LLC ("Wells"), Paul, Hastings, Janofsky & Walker LLP, 515 South Flower Street, Twenty-Fifth Floor, Los Angeles, CA 90071, Attn: Peter S. Burke, (c) Dymas Funding Company LLC, Ableco Finance LLC and A3 Funding LP (collectively, the "Dymas Group"), Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, NY 10005, Attn: Gregory A. Bray, Esq., and (d) Garrison Credit Investments ("Garrison"), Proskauer Rose LLP, 1585 Broadway, New York, NY 10036, Attn: Peter J. Antoszyk, Esq. (Comerica, Wells, the Dymas Group and Garrison, together with any of their respective successors or assigns, (the "Secured Lenders")); (5) counsel to Harris, Torys LLP, 237 Park Avenue, New York, NY 10017, Attn: Alison D. Bauer, Esq., (6) counsel to the Purchaser, Akerman Senterfitt LLP, 335 Madison Ave., Suite 2600, New York, NY 10017, Attn: Susan F. Balaschak, Esq. and (7) Pipeline Data, Inc. 4400 North Point Parkway, Alpharetta, GA 30022, Attn: Sheila Corvino, Esq., so as to be received no later than the Objection Deadline.

UNLESS AN OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT, AND THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER HEARING AND NOTICE.

5. This Notice and the Sale Hearing is qualified in its entirety by, and subject to the terms and conditions of the Bid Procedures Order, which shall control in the event of any

conflict and the Debtors encourage parties-in-interest to review all related documents including the Sale Motion and Bid Procedure Order in their entirety. Parties interested in receiving more information regarding the sale of the Transferred Assets and Assumed Liabilities and/or copies of any related document, including the APA and/or the Sale Motion may make a written request to: (i) financial advisors to the Debtors, Stifel, Nicolaus & Company, Incorporated, 237 Park Ave., 8th Floor, New York, NY, 10017, Attn: Brett J. Pogany; (ii) co-counsel to the Debtors, Nixon Peabody LLP, 437 Madison Avenue, New York, NY 10022, Attn: Dennis J. Drebsky, Esq. In addition, copies of the Motion, the Bidding Procedures Order and this Notice can be found on (i) the Court's website, www.deb.uscourts.gov; and (ii) the website of Noticing Agent Kurtzman Carson Consultants LLC, www.kccllc.com, and are on file with the Clerk of the Bankruptcy Court, Third Floor, 824 Market Street, Wilmington, Delaware 19801. All parties interested in making an offer for the purchase of all or substantially all of the Debtors' assets may do so in accordance with the attached Bid Procedures Order.

Dated: September ____, 2009
Wilmington, DE 19801

Respectfully submitted,

PEPPER HAMILTON LLP

/s/ Evelyn J. Meltzer

David B. Stratton (DE No. 960)
Evelyn J. Meltzer (DE No. 4581)
John H. Schanne, II (DE No. 5260)
Hercules Plaza, Suite 5100
1313 Market Street
P.O. Box 1709
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Telephone: (302) 777-6500
Facsimile: (302) 421-8390

-and-

NIXON PEABODY LLP
Mark N. Berman
Dennis J. Drebsky
Lee Harrington (DE No. 4046)
437 Madison Avenue
New York, New York 10022
Telephone: (212) 940-3000
Facsimile: (212) 940-3111

Counsel for the Debtors and Debtors in Possession

Exhibit B to the Bid Procedures Order

Cure Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

CYNERGY DATA, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered

**NOTICE OF DEBTORS' INTENT TO ASSUME AND ASSIGN
CERTAIN UNEXPIRED LEASES AND EXECUTORY
CONTRACTS AND SETTING FORTH THE CURE AMOUNTS**

PLEASE TAKE NOTICE THAT:

1. On September 16, 2009, the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") entered an Order (I)(A) authorizing and scheduling an auction (the "Auction") at which the Debtors will solicit higher and better offers in connection with the sale of certain assets pursuant to an Asset Purchase Agreement dated August 24, 2009 (the "APA"), (B) approving the bidding procedures (the "Bid Procedures") for such assets, (C) approving the break-up fee and expense reimbursement and (D) approving the form and scope of notice of the Bid Procedures and Auction; and (II) approving procedures for assumption and assignment of certain executory contracts and unexpired leases; and (III) granting related relief as requested therein (the "Amended Bid Procedures Order"). All capitalized terms used but not defined herein shall have the meanings assigned to them in the Bid Procedures Order. A copy of the Bid Procedures Order is being served on you concurrently with this Cure Notice.

2. A hearing at which the above captioned debtors (the "Debtors") will seek approval and authorization of the Sale to the Purchaser or such other party who is the Successful Bidder (the "Sale Hearing") is scheduled to be held on October 7, 2009 at 4:00 p.m. (prevailing Eastern Time), unless otherwise continued by the Debtors pursuant to terms of the Bid Procedures Order, before the Honorable Kevin Gross, United States Bankruptcy Judge, at the Bankruptcy Court, 824 North Market Street, Wilmington, Delaware 19801.

3. The Debtors are party to various executory contracts and unexpired leases (collectively, the "Assumed Contracts"), and pursuant to the Bid Procedures Order, the Debtors intend to assume and assign such Assumed Contracts to the Successful Bidder.

¹ The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

4. You have been identified as counterparty to an Assumed Contract. The Assumed Contract(s) with respect to which you have been identified as a counterparty and the corresponding proposed cure amount (the "Cure Amount") are set forth on Schedule 1 attached hereto.

5. Except as may otherwise be agreed to by the parties to an Assumed Contract (with the consent of the Successful Bidder), on the Closing Date, the Successful Bidder shall cure those defaults under the Assumed Contracts that are ultimately assumed and assigned to the Purchaser or Successful Bidder and that are required to be cured in accordance with section 365(b) of the Bankruptcy Code by (i) payment of the undisputed Cure Amounts, and/or (ii) reserving amounts with respect to the disputed Cure Amounts.

6. In the event of a dispute regarding the Cure Amount not resolved at the Sale Hearing, any payments required, following entry of a Final Order resolving such dispute, shall be made as soon as practicable thereafter. If no objection is timely received, the Cure Amount set forth on Schedule 1 hereto will be controlling notwithstanding anything to the contrary in any Assumed Contract or other documents as of the date of the Cure Notice.

7. The assumption and assignment of any Assumed Contract, and the payment of the Cure Amount if any, will result in the full release and final satisfaction of any claim, interest, recoupment, setoff, defense and/or defaults, whether monetary or non-monetary.

8. Objections, if any, to the proposed assumption and assignment of the Assumed Contracts, including but not limited to, objections relating to the proposed Cure Amount and/or adequate assurance of future performance, must be (a) in writing, (b) state with specificity the nature of such objection and the alleged Cure Amount (with appropriate documentation in support thereof), (iii) comply with the Bankruptcy Rules and Local Rules; (c) be filed with the Clerk of the Bankruptcy Court for the District of Delaware, Third Floor, 824 North Market Street, Wilmington, Delaware 19801, on or before by **12:00 p.m. (prevailing Eastern Time) on October 6, 2009** (the "Cure Objection Deadline"); and (d) be served upon: (1) co-counsel to the Debtors, Nixon Peabody LLP, 437 Madison Avenue, New York, NY 10022, Attn: Dennis J. Drebsky, Esq.; (2) co-counsel to the Debtor, Pepper Hamilton LLP, 1313 North Market Street, Wilmington, DE 19801, Attn: David B. Stratton, Esq.; (3) co-counsel to the Official Committee of Unsecured Creditors appointed in these cases (the "Creditors Committee") (a) Jager Smith P.C., One Financial Center, Boston, Massachusetts, 02111, Attn: Bruce F. Smith and (b) Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE 19899, Attn: Gregory A. Taylor; (4) counsel for (each of) (a) Comerica Bank, ("Comerica"), Bodman LLP, 6th Floor at Ford Field, 1901 St. Antoine Street, Detroit, Michigan 48226, Attn: Robert J. Diehl, Jr., (b) Wells Fargo Foothill LLC ("Wells"), Paul, Hastings, Janofsky & Walker LLP, 515 South Flower Street, Twenty-Fifth Floor, Los Angeles, CA 90071, Attn: Peter S. Burke (c) Dymas Funding Company LLC, Ableco Finance LLC and A3 Funding LP (collectively, the "Dymas Group"), Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, NY 10005, Attn: Gregory A. Bray, Esq., and (d) Garrison Credit Investments ("Garrison"), Proskauer Rose LLP, 1585 Broadway, New York, NY 10036, Attn: Peter J. Antoszyk, Esq. (Comerica, Wells, the Dymas Group and Garrison, together with any of their respective successors or assigns, (the "Secured Lenders"); (5) counsel to Harris, Torys LLP, 237 Park Avenue, New York, NY 10017, Attn: Alison D. Bauer, Esq., (6) counsel to the Purchaser,

Akerman Senterfitt LLP, 335 Madison Ave., Suite 2600, New York, NY 10017, Attn: Susan F. Balaschak, Esq. and (7) Pipeline Data, Inc. 4400 North Point Parkway, Alpharetta, GA 30022, Attn: Sheila Corvino, Esq., so as to be received no later than Cure Objection Deadline.

UNLESS AN OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT, AND THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER HEARING AND NOTICE.

9. Notwithstanding the foregoing paragraph, in the event that the Purchaser is not the Successful Bidder, then objections, if any, to the proposed assumption and assignment of the Assumed Contracts that relate to adequate assurance may be filed at any time prior to the commencement of the Sale Hearing.

10. Where a party to a Assumed Contract files a timely objection asserting a higher cure amount than the Cure Amount, and the parties are unable to consensually resolve the dispute prior to the Sale Hearing, the amount to be paid under section 365 of the Bankruptcy Code with respect to such objection will be determined at the Sale Hearing or such other date and time as may be fixed by the Bankruptcy Court. All other objections to the proposed assumption and assignment of the Assumed Contracts will be heard at the Sale Hearing.

11. Prior to Closing Date, the Debtors may amend their decision with respect to the assumption and assignment of the Assumed Contract(s) and provide you with a new notice amending the information provided herein.

Dated: September ____, 2009
Wilmington, Delaware

Respectfully submitted,
PEPPER HAMILTON LLP

/s/ Evelyn J. Meltzer
David B. Stratton (DE No. 960)
Evelyn J. Meltzer (DE No. 4581)
John H. Schanne, II (DE No. 5260)
Hercules Plaza, Suite 5100
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-and-

NIXON PEABODY LLP
Mark N. Berman
Dennis J. Drebsky
Lee Harrington
437 Madison Avenue
New York, New York 10022
Telephone: (212) 940-3000
Facsimile: (212) 940-3111

*Counsel for the Debtors
and Debtors in Possession*

EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

CYNERGY DATA, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered
Related Docket No. 13

AMENDED ORDER (A) AUTHORIZING AND SCHEDULING AN AUCTION AND HEARING TO APPROVE THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTORS, (B) APPROVING THE BID PROCEDURES FOR SUCH ASSETS, (C) APPROVING BREAK UP FEE AND EXPENSE REIMBURSEMENT (D) APPROVING THE FORM AND SCOPE OF NOTICE OF THE BID PROCEDURES AND AUCTION, (E) ESTABLISHING PROCEDURES RELATING TO THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (F) GRANTING RELATED RELIEF

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”), pursuant to sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of an order approving the bidding procedures and the sale of the Transferred Assets; and the Court having determined that the relief provided herein is in the best interest of the Debtors, their estates, their creditors and other parties in interest; and due and adequate notice of the Motion having been given under the circumstances; and upon the record of the hearing on the Motion, and the full record of these cases; and after due deliberation thereon; and good and sufficient cause appearing therefor,

¹ The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

THE COURT HEREBY FINDS THAT:³

A. This Court has jurisdiction over the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief requested in the Motion are sections 105(a), 363, 365, 503 and 507 of the Bankruptcy Code, (ii) Rules 2002, 6004, 6006, 9007 and 9014 of the Bankruptcy Rules, and (iii) Rule 6004-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

C. Notice of the Motion, having been provided to the parties listed therein (the "Notice Parties"), is sufficient in light of the circumstances and nature of the relief requested in the Motion, and no other or further notice is required except as set forth herein with respect to the Bid Procedures, Auction and Sale Hearing. A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties-in-interest.

D. The Debtors' proposed notice of the Bid Procedures is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the sale of the Transferred Assets, and the Bid Procedures to be employed in connection therewith.

E. The Debtors have articulated good and sufficient reasons for this Court to grant the relief requested in the Motion regarding the sale process, including without limitation, (i) approval of the Bid Procedures, the Expense Reimbursement, and the Break-Up Fee, (ii) the scheduling of the Bid Deadline, Auction and Sale Hearing for the sale of the Transferred Assets; (iii) the establishment of procedures to fix the Cure Amounts to be paid under section 365 of the

³ The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Bankruptcy Code in connection with the assumption and assignment of the executory contracts and unexpired leases, and (iv) approval and authorization to serve the Sale Notice and Cure Notice.

F. The Bid Procedures and the APA were negotiated in good faith and at arms' length by the Debtors and the Purchaser.

G. The Expense Reimbursement, the Break-Up Fee and the provisions regarding termination in Article XI of the APA were material inducements to the Purchaser to submit the bid that will serve as a minimum or floor bid on which the Debtors, their creditors, suppliers, vendors, contract parties and other bidders may rely. The Purchaser has provided a material benefit to the Debtors, their estates and their creditors by increasing the likelihood that the best possible price for the Transferred Assets will be received by the Debtors. Accordingly, the Bid Procedures, the Expense Reimbursement, and the Break-Up Fee, are reasonable and appropriate and represent the best method for maximizing value for the benefit of the Debtors, their estates and creditors.

H. The Debtors have demonstrated that the Expense Reimbursement and the Break-Up Fee are actual and necessary costs and expenses of preserving the Debtors' estates, within the meaning of section 503(b) of the Bankruptcy Code, and of substantial benefit to the Debtors' estates by inducing the Purchaser's bid, which has established a bid minimum for other bidders for the Transferred Assets, thereby ensuring that during the Auction, if any, the Debtors receive the highest or best bid possible for the Transferred Assets.

I. The Sale Notice is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, Sale and Sale Hearing.

J. The Cure Notice is appropriate and reasonably calculated to provide all counterparties to the Assumed Contracts with proper notice of the potential assumption and assignment of the Assumed Contracts.

K. The entry of this Bid Procedures Order is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest.

IT IS HEREBY ORDERED, JUDGED AND DECREED THAT:

1. The Motion is GRANTED in all respects.
2. All objections, if any to the Motion or the relief provided herein that have not been withdrawn, waived, or settled, as announced to the Court at, or prior to, the hearing on the Motion or any adjournment thereof or set forth in a stipulation presented to the Court, and all reservations of rights included therein, are hereby overruled on the merits.
3. The Bid Procedures, in substantially the form annexed hereto as Schedule L, are APPROVED and the terms thereof are incorporated herein as if fully set forth herein and shall apply with respect to the proposed sale of the Transferred Assets. The Debtors are authorized to take all actions necessary or appropriate to implement the Bidding Procedures.
4. As further described in the Bid Procedures, the deadline for submitting bids for the Transferred Assets is October 2, 2009 at 4:00 p.m. (prevailing Eastern Time) (the "Bid Deadline").
5. Pursuant to Bankruptcy Rule 6004(f)(1), the Debtors are authorized to conduct an Auction in respect of the Transferred Assets pursuant to the terms and conditions set forth herein. If Qualified Bids are received by the Debtors in accordance with the Bid Procedures, the Auction shall take place on October 5, 2009 at 10:00 a.m. (prevailing Eastern Time) at the offices of Nixon Peabody LLP, 437 Madison Avenue, New York, NY 10022, or such other location and

time as designated by the Debtors in a notice to all Qualified Bidders and the Creditors Committee. If, however, no Qualified Bid is received (other than the APA), the Auction will not be held and the Debtors shall immediately seek Bankruptcy Court approval of the sale to the Purchaser pursuant to the APA.

6. The Auction may be adjourned as the Debtors deem appropriate. Reasonable notice of such adjournment and the time and place for the resumption of the Auction shall be given to the Purchaser, all other Qualified Bidders, any Creditors Committee, the Secured Lenders and Harris

7. Each Qualified Bidder at the Auction will be required to confirm that it has not engaged in any collusion with respect to its bidding on the Transferred Assets.

8. The Auction will be conducted openly and all creditors of the Debtors are permitted to attend.

9. Bidding at the Auction will be transcribed or videotaped.

10. The Sale Hearing is scheduled to be held on October 7, 2009 at 2:00 p.m. (Eastern Time) before the Honorable Judge Kevin Gross United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801. The Debtors will seek the entry of an order of this Court at the Sale Hearing approving and authorizing the Sale to the Purchaser or such other party who is the Successful Bidder, on terms and conditions consistent with the APA or Modified APA, as may be amended and modified.

11. The form and scope of the Sale Notice attached hereto as Exhibit A is reasonable and appropriate and is hereby APPROVED and incorporated herein as if fully set forth herein.

12. The Debtors are hereby authorized and directed to serve copies of this Order and the Sale Notice, in substantially the form attached hereto as Exhibit A upon: (a) the U.S. Trustee, (b) counsel to any Creditors Committee; (c) counsel to the Secured Lenders; (d) counsel to the postpetition lenders; (e) counsel to Harris; (f) parties entitled to receive notice in these Cases pursuant to Bankruptcy Rule 2002; (g) all entities known by the Debtors to have asserted any lien, claim, interest, or encumbrance in or on the Transferred Assets, (h) ~~all counterparties to the Assumed Contracts.~~ (i) the Internal Revenue Service and all state/local taxing authorities in jurisdictions where the Seller has or may have any tax liability; and (j) all persons who have expressed an interest in acquiring one or more of the Transferred Assets within the last six months, no later than one (1) day after entry of this Order, by first class mail, postage prepaid, or other method reasonably calculated to provide notice of the Sale and the Auction, and such service shall constitute good and sufficient notice of the sale of the Transferred Assets this Order, the Auction, the Sale Hearing and all proceedings to be held thereon.

13. The Break-Up Fee, the Expense Reimbursement and the termination provisions of Article XI of the APA are APPROVED.

14. The Debtors are hereby authorized and directed without the need for further order of this Court to pay the Expense Reimbursement and the Break-Up Fee whether or not the Purchaser elects to submit overbids.

15. The Break-Up Fee and the Expense Reimbursement constitute allowed administrative expense claims pursuant to sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code.

16. No person or entity, other than the Purchaser shall be entitled to any expense reimbursement or break-up fee, topping, termination or other similar fee or payment. Any bidder

that seeks payment of such fees from Debtors in connection with any bid shall not be a Qualified Bidder and shall be excluded from the Auction and Sale Hearing.

17. The form and scope of the Cure Notice attached hereto as Exhibit B is reasonable and appropriate and is hereby APPROVED and incorporated herein as if fully set forth herein.

18. No later than ten 10 days prior to the Sale Hearing, the Debtors shall serve by first class mail or hand delivery a Cure Notice on each non-debtor counterparty to each Assumed Contract. Such Cure Notice is without prejudice to the Purchaser to exclude any executory contract or unexpired lease from assumption and assignment to the Purchaser, as set forth in the APA.

19. All objections, if any, to the proposed assumption and assignment of the Assumed Contracts to the Purchaser, including but not limited to, objections to the Cure Amounts must (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) to the extent it challenges a schedule Cure Amount, set forth the cure amount being claimed by the objecting party and provide appropriate documentation to support its objection; (d) be filed with the clerk of the Bankruptcy Court for the District of Delaware, Third Floor, 824 North Market Street, Wilmington Delaware 19801 by ~~4~~12:00 p.m. (prevailing Eastern Time) on October 6, 2009 at ~~12:00 p.m.~~ (the "Cure Objection Deadline"); and (e) be served upon (i) co-counsel to the Debtors, Nixon Peabody LLP, 437 Madison Avenue, New York, NY 10022, Attn: Dennis J. Drebsky, Esq.; (ii) co-counsel to the Debtor, Pepper Hamilton LLP, 1313 North Market Street, Wilmington, DE 19801, Attn: David B. Stratton, Esq.; (iii) counsel to the Official Committee of Unsecured Creditors, Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE 19899, Attn: Gregory A. Taylor, Esq., and Jager Smith P.C., One Financial Center, Boston, MA 02111, Attn: Bruce F. Smith; (iv) counsel for each of (A) Comerica,

Bodman LLP, 6th Floor at Ford Field, 1901 St. Antoine Street, Detroit, MI 48336, Attn: Robert J. Diehl, Jr., Esq., (B) Wells, Paul, Hastings, Janofsky & Walker LLP, 515 South Flower Street, 25th Floor, Los Angeles, CA 90071, Attn: Peter S. Burke, Esq., (C) the Dymas Group), Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, NY 10005, Attn: Gregory A. Bray, Esq., and (D) Garrison, Proskauer Rose LLP, 1585 Broadway, New York, NY 10036, Attn: Peter J. Antoszyk, Esq.; (v) counsel to Harris, Torys LLP, 237 Park Avenue, New York, NY 10017, Attn: Alison D. Bauer, Esq.; (vi) counsel to the Purchaser, Akerman Senterfitt LLP, 335 Madison Ave., Suite 2600, New York, NY 10017, Attn: Susan F. Balaschak, Esq.; and (vii) Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), 844 King Street, Room 2313, Wilmington, DE 19801 (Attn: Thomas P. Tinker), so as to be received no later than the Cure Objection Deadline.

20. Unless otherwise agreed to between the parties to the Assumed Contracts and the Purchaser (or if not the Purchaser, with the consent of the Successful Bidder), the Purchaser, in accordance with, and as limited by, the terms of the APA (or if not the Potential Purchaser, the Successful Bidder) shall cure those defaults at the closing that are required to be cured in accordance with section 365(b) of the Bankruptcy Code by payment of the undisputed portion of the Cure Amounts and/or reserving amount with respect to the disputed portion of the Cure Amounts. If no objection is timely received, the Cure Amounts set forth in the Cure Notice shall control without regard to anything contrary in the Assumed Contract or any other document as of the date of the Cure Notice.

21. Notwithstanding anything to the contrary herein, through the date of Closing, the Debtors, the Purchaser or the Successful Bidder, as the case may be, shall have the right to exclude from the Transferred Assets any one or more Permits or Contracts, and in such case any

such excluded Contract or Permit shall constitute an Excluded Asset and shall not constitute, for any purpose whatsoever, a Transferred Asset. Neither the Debtors, the Purchaser nor the Successful Bidder shall incur any liability, obligation, or debt in connection with or related to such Excluded Assets. In the event the Debtors, the Purchaser or the Successful Bidder exercises its right to excluded from the Transferred Assets one or more Permits or Contracts that had been designated as an Assumed Contract (the "Additional Excluded Contracts"), on or before the Closing, the Debtors will serve a notice on the non-debtor counterparties to such Additional Excluded Contracts.

22. In the event that the Purchaser is not the Successful Bidder for the Transferred Assets, ~~within two (2) business days after~~ on October 5, 2009, at the conclusion of the Auction, the Debtors propose to serve a notice via facsimile identifying the Successful Bidder upon each Counter-Party to an executory contract or unexpired lease to be assumed and assigned to the Successful Bidder. Each Counter-Party shall have until 4:12:00 p.m. on the date this is two (2) business days prior to the Sale Hearing October 6, 2009 (the "Adequate Assurance Objection Deadline") to object to the assumption and assignment of such executory contract or unexpired lease solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.

23. In the event a party to a Assumed Contract files a timely objection asserting a higher cure amount than the Cure Amount, and the parties are unable to consensually resolve the dispute prior to the Sale Hearing, the amount to be paid under section 365 of the Bankruptcy Code with respect to such objection will be determined at the Sale Hearing or such other date and time as may be fixed by this Court. All other objections to the proposed assumption and assignment of the Assumed Contracts will be heard at the Sale Hearing.

24. Responses or objections, if any, to the relief requested in the Motion with regard to the request for the sale of the Transferred Assets, must be (a) in writing; (b) state with specificity the basis therefore; (c) comply with the Bankruptcy Rules and the Local Rules; (d) be filed with the clerk of the Bankruptcy Court for the District of Delaware, Third Floor, 824 North Market Street, Wilmington Delaware 19801; and (e)

25. Debtors further request that any responses or objections to the relief to be considered at the Sale Hearing, including, but not limited to, the Debtors' request to approve the sale of the Transferred Assets, be (a) in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the clerk of the Bankruptcy Court for the District of Delaware, Third Floor, 824 North Market Street, Wilmington Delaware 19801 by 4:12:00 p.m. (prevailing Eastern Time) on October 6, 2009 (the "Objection Deadline"); and (d) be served upon (i) co-counsel to the Debtors, Nixon Peabody LLP, 437 Madison Avenue, New York, NY 10022, Attn: Dennis J. Drebsky, Esq.; (ii) co-counsel to the Debtor, Pepper Hamilton LLP, 1313 North Market Street, Wilmington, DE 19801, Attn: David B. Stratton, Esq.; (iii) ~~co-counsel to any Creditors Committee~~the Official Committee of Unsecured Creditors appointed in these cases (the "Creditors Committee"); (a) Jager Smith P.C., One Financial Center, Boston, Massachusetts, 02111, Attn: Bruce F. Smith and (b) Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE 19899, Attn: Gregory A. Taylor; (iv) counsel for each of (A) Comerica, Bodman LLP, 6th Floor at Ford Field, 1901 St. Antoine Street, Detroit, MI 48336, Attn: Robert J. Diehl, Jr., Esq., (B) Wells, Paul, Hastings, Janofsky & Walker LLP, 515 South Flower Street, 25th Floor, Los Angeles, CA 90071, Attn: Peter S. Burke, Esq., (C) the Dymas Group), Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, NY 10005, Attn: Gregory A. Bray, Esq., and (D) Garrison, Proskauer Rose

LLP, 1585 Broadway, New York, NY 10036, Attn: Peter J. Antoszyk, Esq.; (v) counsel to Harris, Torys LLP, 237 Park Avenue, New York, NY 10017, Attn: Alison D. Bauer, Esq.; (vi) counsel to the Purchaser, Akerman Senterfitt LLP, 335 Madison Ave., Suite 2600, New York, NY 10017, Attn: Susan F. Balaschak, Esq.; and (vii) Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), 844 King Street, Room 2313, Wilmington, DE 19801 (Attn: Thomas P. Tinker), so as to be received no later than the Objection Deadline.

26. Notwithstanding Bankruptcy Rule 6004(h), 6006(d), 7062 or 9014, if applicable or any other local rule or otherwise, the terms of this Order shall be effective and enforceable immediately upon its entry.

27. Any conflict between the terms and provisions of this Order and the APA, shall be resolved in favor of this Order.

28. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order.

Dated: Wilmington, Delaware
September ___ 2009

UNITED STATES BANKRUPTCY JUDGE

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